IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2006-0171
Appellee,	)	DEPARTMENT B
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
CHRISTOPHER JOHN PRADO,	)	Rule 111, Rules of
	)	the Supreme Court
Appellant.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20052711

Honorable Ted B. Borek, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Joseph L. Parkhurst
Tucson
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Alex Heveri
Tucson
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E C K E R S T R O M, Presiding Judge.

¶1 Appellant Christopher John Prado was convicted after a jury trial of two counts of aggravated driving while under the influence of an intoxicant (DUI), one count

based on his having committed or been convicted of two or more prior DUI offenses, and the other based on the fact that his license was suspended, revoked, or he had driven in violation of a restriction, and two counts of aggravated driving with a blood alcohol concentration (BAC) of .08 or more based on the two circumstances described above. The trial court placed Prado on probation for six years, ordering him to serve a mandatory prison term of six months. On appeal, Prado contends the trial court erred by denying his motion to suppress evidence, claiming an unlawful stop of his vehicle, and his motion to suppress evidence of his BAC. We affirm.

¶2 In reviewing the propriety of the trial court's rulings, we consider only the evidence presented at the suppression hearing and view that evidence and all reasonable inferences therefrom in the light most favorable to upholding the rulings. *See State v. Livingston*, 206 Ariz. 145, ¶ 3, 75 P.3d 1103, 1104 (App. 2003). We will not disturb the court's rulings absent an abuse of discretion. *See id.* ¶ 3. "We defer to the trial court's factual findings that are supported by the record and not clearly erroneous." *State v. Rosengren*, 199 Ariz. 112, ¶ 9, 14 P.3d 303, 307 (App. 2000). And we review any questions of law de novo. *State v. Estrada*, 209 Ariz. 287, ¶ 2, 100 P.3d 452, 453 (App. 2004).

¶3 Tucson Police Officer Michael Proctor testified at the suppression hearing that he had stopped Prado because he had watched Prado turn his eastbound car left into the center lane of Craycroft rather than the median lane, head northbound, change to the right

lane without turning on his directional signal, turn right onto Broadway, and head eastbound on Broadway. Proctor stopped Prado for what the officer believed was an illegal left turn.

¶4 Section 28-751(2), A.R.S., requires a person who intends to turn left to

> approach the turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of the vehicle. If practicable the driver shall make the left turn from the left of the center of the intersection and shall make the turn to the left lane immediately available for the driver's direction of traffic.

Prado presented expert testimony in an attempt to establish that, given the distance between Cooper, the street Prado had initially turned from, and Broadway, it would have been safer for Prado to enter the middle lane rather than the median lane because that only required two, not three, lane changes. Prado asserted that, under these circumstances, it was not, in fact, practicable for him to turn into the median lane and that, therefore, Officer Proctor had lacked reasonable suspicion to stop him for violating the statute. At the end of the hearing, the court discussed with the parties the meaning of the statute and took the matter under advisement, ultimately denying the motion to suppress in a thorough, thoughtful minute entry.

¶5 Whether the stop of a vehicle was lawful is a mixed question of law and fact; "[w]e review *de novo* the court's ultimate legal determination of the propriety of a stop as a 'mixed question of law and fact.'" *Livingston*, 206 Ariz. 145, ¶ 3, 75 P.3d at 1104, *quoting State v. Rogers*, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996). In order to stop a vehicle, an officer must "possess a reasonable suspicion that the driver has committed an

offense," that is, """a particularized and objective basis for suspecting the particular person stopped of criminal activity."""" *Id.* ¶ 9, *quoting State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996), *quoting United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 695 (1981).

¶6 The record reflects that the trial court interpreted and applied § 28-751(2) consistently with this court's recent decision in *State v. Cuevas*, 214 Ariz. 393, ¶ 14, 153 P.3d 414, 418 (App. 2007). There, this court reversed the trial court's order granting the defendant's motion to suppress evidence seized after police officers stopped the defendant's car for violating precisely the same statute by turning left into the middle lane rather than the median lane. *Id*. We considered whether § 28-751(2) "requires a driver making a left turn to turn only into the leftmost lane of the street onto which he or she is turning." 214 Ariz. 393, ¶ 7, 153 P.3d at 416. Like Prado, the defendant in *Cuevas* relied on *Livingston* to support his interpretation of the words "if practicable" in § 28-751(2). 214 Ariz. 393, ¶ 12, 153 P.3d at 417. This court concluded the trial court had granted the motion to suppress based on erroneously interpreting the statute as meaning the words "immediately available" depended on the location of the car when the driver began making the turn and its conclusion that, under some circumstances, a turn into a lane other than the median lane might be practicable and not prohibited by § 28-751 or any other statute. 214 Ariz. 393, ¶ 8, 153 P.3d at 416.

¶7 Although this court noted in *Cuevas* there did not appear to be any reason why the defendant in that case could not have turned onto the median lane, *id.* ¶ 13, we remanded the case to the trial court with instructions to decide whether the officer's testimony that the defendant had turned into the through lane and not the median lane had been credible "and whether under the circumstances such a turn was 'practicable,'" *id.* ¶ 14. But, here, the issue of whether it had been practicable for Prado to enter the median lane, given that he intended to turn right within 480 feet, was throughly litigated, and the trial court carefully considered that argument as it related to the statute. The trial court made findings of fact based on the testimony of the officer and the defense's expert. The record amply supports those findings. The court also articulated the correct test for determining whether the stop had been lawful, stating: "[P]olice may make a traffic stop where from the standpoint of an objectively reasonable police officer there is reasonable suspicion or probable cause to believe a traffic violation has occurred." And, finally, given the court's factual findings and correct interpretation of § 28-751, the court did not err when it concluded "the officer had probable cause to believe a traffic violation occurred."

¶8 Nor did the court err in denying Prado's motion to preclude the state from introducing the results of blood tests establishing Prado's BAC. Prado argued in his motion and at the suppression hearing that because the officers had failed to obtain a warrant, the state could not introduce the blood test results. He contends, as he did below, that he did

not consent to having his blood drawn. He argues there were no exigent circumstances that excused this warrantless seizure of his blood.

¶9 The evidence at the suppression hearing established that after field sobriety tests were conducted and a preliminary breath test administered, Officer O'Hara told Prado he had the right to an independent test to determine his BAC. According to Officer Proctor, Prado asked for a blood test. Proctor and another officer took Prado to a local hospital, found a phlebotomist, and directed that two vials of blood be drawn, presumably, one for law enforcement and one for Prado. No warrant was obtained. The trial court rejected Prado's argument that because he had not consented, an exception to the warrant requirement, the blood test results should be suppressed, stating in its minute entry, that Prado had been told of the implied consent law, A.R.S. § 28-1321, and that in his motion to suppress he admitted having asked to be taken to the hospital for the independent test. The court distinguished this case from *State v. Flannigan*, 194 Ariz. 150, 978 P.2d 127 (App. 1998), on the ground that, there, the state had waived the consent argument. It distinguished this case from *State v. Estrada*, 209 Ariz. 287, 100 P.3d 452 (App. 2004), because, there, the blood had been drawn for medical treatment against the defendant's will. The court added: "Consent is a permissible exception to [the] warrant [requirement]. Here, the State does not rely on exigency, and this Court concludes Defendant consented to the medical draw after being advised of his rights . . . by seeking a draw at a hospital, such request being accommodated by the police."

¶10 The trial court did not err. Section 28-1321(A), Arizona's implied consent law, provides that a person implicitly consents to provide a breath or blood sample for testing in exchange for the privilege of driving. If a person refuses to submit to a test to determine his or her BAC, then "[t]he test shall not be given, except as provided in § 28-1388, subsection E or pursuant to a search warrant." § 28-1321(D)(1). Section 28-1388(E), A.R.S., states:

> Notwithstanding any other law, if a law enforcement officer has probable cause to believe that a person has violated § 28-1381 and a sample of blood, urine or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis shall be provided to a law enforcement officer if requested for law enforcement purposes.

That is precisely what occurred here.

¶11 What offends the constitution are unreasonable, physically intrusive procedures compelled by law enforcement officers for law enforcement purposes. *See generally Schmerber v. California*, 384 U.S. 757, 770-72, 86 S. Ct. 1826, 1835-36 (1966). Here, Prado requested the procedure. And what occurred was no different from permitting law enforcement officers to obtain a sample of blood after blood has already been drawn during the course and for the purposes of consensual medical treatment. Finally, *Flannigan* and *Estrada* are distinguishable. In *Flannigan*, the defendant had not consented to have blood drawn for independent testing. 194 Ariz. 150, ¶ 15, 978 P.2d at 130. And there, unlike in this case, the state had argued exigent circumstances justified obtaining a sample

without a warrant. *Id*. ¶ 11. In *Estrada*, as the trial court in this case correctly noted, the defendant had refused medical treatment. 209 Ariz. 287, ¶ 10, 100 P.3d at 455.

¶12 The trial court did not abuse its discretion in denying the motions to suppress evidence. We therefore affirm the convictions and the sentences imposed.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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PHILIP G. ESPINOSA, Judge